

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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IN RE: AQUEOUS FILM-FORMING *
FOAMS PRODUCTS LIABILITY *
LITIGATION *

MDL No. 2:18-mn-2873

June 21, 2019

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REPORTER'S OFFICIAL TRANSCRIPT OF THE STATUS CONFERENCE
HELD BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE
JUNE 21, 2019

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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

9 : 1 3 A M 1 (Call to order of the Court.)

9 : 1 3 A M 2 **THE COURT:** Good morning. Please be seated. Okay.
9 : 1 3 A M 3 We are here with our monthly status conference in our AFFF MDL.
9 : 1 3 A M 4 Let me have counsel first for the plaintiff who
9 : 1 3 A M 5 will be speaking here today identify themselves for the record,
9 : 1 4 A M 6 please.

9 : 1 4 A M 7 **MR. THOMPSON:** Your Honor, my name is Fred Thompson.
9 : 1 4 A M 8 I'm the plaintiffs' liaison counsel.

9 : 1 4 A M 9 **THE COURT:** Yes, sir.

9 : 1 4 A M 10 **MR. LONDON:** Good morning, Your Honor. Michael
9 : 1 4 A M 11 London on behalf of the PEC.

9 : 1 4 A M 12 **MR. SUMMY:** Good morning, Your Honor. Scott Summy.

9 : 1 4 A M 13 **MR. NAPOLI:** Good morning, Your Honor. Paul Napoli.

9 : 1 4 A M 14 **MR. BILOTT:** Good morning, Your Honor. Rob Bilott,
9 : 1 4 A M 15 advisory counsel.

9 : 1 4 A M 16 **THE COURT:** Thank you. Okay. Mr. Petrosinelli, good
9 : 1 4 A M 17 morning.

9 : 1 4 A M 18 **MR. PETROSINELLI:** Good morning. Joe Petrosinelli,
9 : 1 4 A M 19 one of the defense co-leads.

9 : 1 4 A M 20 **MR. DUKES:** Good morning, Your Honor. David Dukes.

9 : 1 4 A M 21 **MR. OLSEN:** Good morning, Your Honor. Michael Olsen.

9 : 1 4 A M 22 **MR. DUFFY:** Good morning, Your Honor. Brian Duffy as
9 : 1 4 A M 23 co-lead.

9 : 1 4 A M 24 **MR. RING:** Good morning, Your Honor. Dan Ring.

9 : 1 4 A M 25 **MS. WILLIAMS:** Good morning, Your Honor. Sarah

9 : 1 4 A M 1 williams for the United States.

9 : 1 4 A M 2 **THE COURT:** Okay. Folks, I have a list, and then
9 : 1 4 A M 3 we'll go through my list, and if there are other matters that
9 : 1 4 A M 4 counsel wish to raise with me, I'm delighted to hear from you
9 : 1 4 A M 5 about that.

9 : 1 4 A M 6 Someone give me a status report on our efforts
9 : 1 5 A M 7 to develop plaintiff and defense fact sheets.

9 : 1 5 A M 8 **MR. RING:** Mr. London and I will address that one.
9 : 1 5 A M 9 Dan Ring on behalf of the Defense Coordinating Committee.

9 : 1 5 A M 10 I'm pleased to report that after what could only
9 : 1 5 A M 11 be described as extensive give and take and back and forth with
9 : 1 5 A M 12 Mr. London and others that on four plaintiff fact sheets -- and
9 : 1 5 A M 13 I'll explain what they are in a moment -- we've reached a
9 : 1 5 A M 14 general consensus, with one caveat I will explain. And the
9 : 1 5 A M 15 four, Your Honor, are an individual personal injury fact sheet,
9 : 1 5 A M 16 an individual property damage fact sheet, an individual medical
9 : 1 5 A M 17 monitoring fact sheet, and a water provider fact sheet.

9 : 1 5 A M 18 If a person has more than one of those
9 : 1 5 A M 19 individual claims, they'll fill out more than one fact sheet.

9 : 1 5 A M 20 **THE COURT:** Sure.

9 : 1 5 A M 21 **MR. RING:** And the one exception there is a question
9 : 1 5 A M 22 that overlaps with the defense fact sheet that the defense has
9 : 1 5 A M 23 proposed to take out, and if it's reciprocal, we'll take it out
9 : 1 6 A M 24 in both.

9 : 1 6 A M 25 The defense fact sheet, we have exchanged

9 : 1 6 A M 1 drafts. We're not yet at the point of being able to say we
9 : 1 6 A M 2 have a consensus or disagreements to present to the Court. The
9 : 1 6 A M 3 CMO that goes along with those as a proposed implementing
9 : 1 6 A M 4 order, we actually have made a great deal of progress, and
9 : 1 6 A M 5 conceptually I think we're in agreement. There are a couple of
9 : 1 6 A M 6 issues, one of which is also on the agenda today, is -- relates
9 : 1 6 A M 7 to the responsive pleadings and whether that's a trigger
9 : 1 6 A M 8 date --

9 : 1 6 A M 9 **THE COURT:** Correct.

9 : 1 6 A M 10 **MR. RING:** -- for fact sheets. And in part,
9 : 1 6 A M 11 Mr. Petrosinelli will address responsive pleadings, but I'll
9 : 1 6 A M 12 just touch on them now.

9 : 1 6 A M 13 The plaintiffs have proposed that the trigger
9 : 1 6 A M 14 date be off a responsive pleading. The defense has proposed
9 : 1 6 A M 15 the trigger date just simply be a set date number of days after
9 : 1 6 A M 16 the order is entered implementing the fact sheets, and that
9 : 1 7 A M 17 dispute is in front of the Court today. Once that is resolved,
9 : 1 7 A M 18 that will resolve certain provisions of the CMO itself and the
9 : 1 7 A M 19 timing for when fact sheets would need to be answered.

9 : 1 7 A M 20 **THE COURT:** You know, I'm telling you something as an
9 : 1 7 A M 21 experienced MDL lawyer you know. The fact sheets are both of
9 : 1 7 A M 22 y'all's best friends, right? We're kind of narrowing and
9 : 1 7 A M 23 focusing, and it makes everybody really drill down in a way
9 : 1 7 A M 24 that narrows the case but focuses it, and it is in everybody's
9 : 1 7 A M 25 interests. So I understand how there could be disagreements,

9 : 1 7 A M 1 and y'all have different needs and different approaches, and
9 : 1 7 A M 2 I -- there are understandable differences. If you reach an
9 : 1 7 A M 3 impasse on any of this stuff, I'm glad to decide it, okay? I
9 : 1 7 A M 4 think it's better for y'all to do it, but I'm prepared to do
9 : 1 7 A M 5 it. It's not that hard for me.

9 : 1 7 A M 6 Let me because you've raised the -- I was going
9 : 1 7 A M 7 to do it a little bit later today, this whole responsive
9 : 1 7 A M 8 pleading thing, and let me just raise a concern I have. I
9 : 1 8 A M 9 know, you know, people say, "Oh, you know, you file the
9 : 1 8 A M 10 complaint. Then you get a -- you know how lawsuits are. You
9 : 1 8 A M 11 get the answer." MDLs are a little funny about all of that,
9 : 1 8 A M 12 because we're talking about lots of pleadings. The most
9 : 1 8 A M 13 important part of a -- of both the complaint and the answer is
9 : 1 8 A M 14 to put everybody on notice what issues are in contest. And I'm
9 : 1 8 A M 15 less concerned about, you know, pushing a date for the -- for
9 : 1 8 A M 16 the answers as I am about having the defendants in some
9 : 1 8 A M 17 meaningful way to assert what those major defenses are. And
9 : 1 8 A M 18 why do I want that? Because we're going to do discovery, and
9 : 1 8 A M 19 everybody has got to know -- I mean, I think Mr. London can
9 : 1 8 A M 20 probably guess what those defenses are, but they need to be
9 : 1 8 A M 21 stated, and that to me is like a really important thing. I
9 : 1 8 A M 22 think Ms. Williams actually made that proposal. The whole idea
9 : 1 8 A M 23 of getting the answers in -- I mean, I remember in my prior
9 : 1 9 A M 24 MDL, we had all this stuff about how we were going to do it.
9 : 1 9 A M 25 It was going to be a single common answer. Are we going to

9 : 1 9 A M 1 have individual ones? And it just seemed to me a lot of
9 : 1 9 A M 2 trouble and a lot of burden on everybody that wasn't that
9 : 1 9 A M 3 important, but what is important is what are those defenses?
9 : 1 9 A M 4 So I want y'all to talk about that. I'm not all burned up
9 : 1 9 A M 5 about when that answer comes in right this moment. That to me
9 : 1 9 A M 6 is less important than the defendants candidly disclosing what
9 : 1 9 A M 7 they see now as their defenses.

9 : 1 9 A M 8 Now, listen, folks. We could get in the middle
9 : 1 9 A M 9 of discovery, and there may be new claims and/or new defenses
9 : 1 9 A M 10 arising out of discovery. That happens in litigation, but I
9 : 1 9 A M 11 think that is the bigger concern I have. So I want y'all --
9 : 1 9 A M 12 next month we'll talk about that, but I want y'all to think
9 : 1 9 A M 13 about a way in which the assumptions of the plaintiffs are
9 : 1 9 A M 14 confirmed about what the issues are. That's really what I want
9 : 2 0 A M 15 laid out.

9 : 2 0 A M 16 And, you know, if people feel strongly about
9 : 2 0 A M 17 having answers filed, we can talk about an efficient way to do
9 : 2 0 A M 18 it. I just sort of think it's just at this point there are
9 : 2 0 A M 19 bigger fish to fry than the technicalities of getting all these
9 : 2 0 A M 20 answers in.

9 : 2 0 A M 21 So unless y'all want to address that issue in
9 : 2 0 A M 22 more detail now, I'm going to suggest -- Mr. Petrosinelli, what
9 : 2 0 A M 23 are your thoughts about that?

9 : 2 0 A M 24 **MR. PETROSINELLI:** I think you've given us the
9 : 2 0 A M 25 guidance we need, and we ought to talk about it.

9 : 2 0 A M 1 **THE COURT:** But I don't want to hold up the fact
9 : 2 0 A M 2 sheets. I want the fact sheets moving. I -- you know, one of
9 : 2 0 A M 3 the things here is -- and, you know, this is MDL by Judge
9 : 2 0 A M 4 Fallon, and he says get those fact sheets in, because it --
9 : 2 0 A M 5 it's everybody's friend. It helps the case get structured, and
9 : 2 0 A M 6 I don't want to be delaying that for the answer, because to me
9 : 2 0 A M 7 the fact sheet is a lot more important.

9 : 2 0 A M 8 I mean, I can think in my 30 years of practice
9 : 2 1 A M 9 maybe three times the answer actually mattered, okay? Usually
9 : 2 1 A M 10 when the defendant puts something in it he or it lived to
9 : 2 1 A M 11 regret, okay? Other than that, I never remember it mattering,
9 : 2 1 A M 12 okay? But -- so I'm not -- so y'all talk about it, and we'll
9 : 2 1 A M 13 deal with it next month, and if I need to rule on it, I'll make
9 : 2 1 A M 14 a determination of that.

9 : 2 1 A M 15 But -- so I want y'all to get to the defense
9 : 2 1 A M 16 fact sheets. I'm not surprised that y'all have made progress
9 : 2 1 A M 17 on the plaintiffs, but this needs to be reciprocal, and, you
9 : 2 1 A M 18 know, we need to be -- one of our tasks here is to try to
9 : 2 1 A M 19 trace, you know, where are the sites at issue, and tracing the
9 : 2 1 A M 20 product that went to those sites is going to be an important
9 : 2 1 A M 21 part of the building blocks of this case, and I want us to get
9 : 2 1 A M 22 on with that.

9 : 2 1 A M 23 At some point, you know, we're going to be going
9 : 2 1 A M 24 to the federal government saying, "This is where -- we've come
9 : 2 1 A M 25 to your door," but you got to do that. You got to give them --

1 that information, you know, I think is an important part of
2 that. So --

3 **MR. RING:** And to your point, Your Honor, to get to
4 the fact sheets, rather than even waiting to the next
5 conference, what Mr. London and I have discussed is using the
6 next week to two weeks to see if we can iron out differences on
7 the defense fact sheet which was trailing our work on the
8 plaintiff fact sheets and the CMO, and by July 9th, sooner if
9 we can, submit either we agree or we don't, and just --

10 **THE COURT:** I'll rule. I mean, you know, I don't
11 mind ruling on these things, but I do think it'll be the best
12 thing that happened to everybody to getting these fact
13 sheets -- the process beginning, and as new parties come in, to
14 get them filled -- it's an important part and building block
15 for the case.

16 **MR. RING:** And one of the intersecting issues is we
17 did get the proposed master discovery, so we're looking at
18 that --

19 **THE COURT:** Right.

20 **MR. RING:** -- in conjunction with the defense fact
21 sheet.

22 **THE COURT:** Right, and, you know, in some ways -- you
23 know, in some things we don't really need to address that,
24 because we're going to address it in the form of discovery
25 responses. All I'm trying to do is in a sort of organized,

1 systematic way, let's get the document discovery moving, and
2 let's -- to the extent we have people who don't really have
3 claims, let's know that, and the people who do have claims, we
4 want to be able to, you know, to litigate their claims, okay?

5 **MR. RING:** Thank you, Your Honor.

6 **THE COURT:** Thank you very much. Last month we
7 talked about a potential deposition protocol. I know the
8 plaintiff said, "Hey, the rules are fine." Defense said,
9 "well, we had some small concerns." Did y'all make any
10 progress on that?

11 **MR. THOMPSON:** Your Honor, in the joint status report
12 though, we've exchanged deposition protocol, and I believe that
13 we're making good progress. We will have one.

14 **THE COURT:** Let's get it done, or if not -- I mean,
15 let's not reinvent the wheel. I mean, rules are generally sort
16 of okay. Y'all among yourselves ought to be able to work it
17 out, but if there's some basic things that for orderliness, I'm
18 all for doing it, but let's not reinvent the wheel on this
19 thing, okay?

20 Let's -- I had a motion to dismiss filed
21 recently by the County of Suffolk. It raises a number of
22 issues that would cover all the cases, and I was a little
23 surprised to be getting a motion to dismiss at this stage. I'm
24 certainly not going to issue orders on 106 different cases on
25 motions to dismiss picking apart pleadings. That's just not

1 the way we do things in MDLs. The case is not going away on a
2 motion to dismiss, at least the one filed by the County of
3 Suffolk, and it highlights -- I was a little surprised, because
4 it wasn't signed by the -- by the Defense Coordinating
5 Committee, and I went back, and I realized the CMO didn't
6 require it, just consultation. And we're going to have chaos
7 if we have random parties filing motions to dismiss. There's
8 no way we're going to keep -- I mean, I'm not going to issue
9 106 different orders on motions to dismiss.

10 And I'm thinking about changing the CMO 2 to
11 require the -- A, the -- if a motion to dismiss is filed, that
12 it be signed by the Defense Coordinating Committee; and
13 secondly, if it's applicable to other claims, to file them all
14 at once. Don't file me random ones, because there were many of
15 these claims in Suffolk County I think that would just cut
16 across all the cases. So I'm not going to issue random ones.

17 So what did counsel think about -- first of all,
18 did the Defense Coordinating Committee endorse this motion to
19 dismiss?

20 **MR. PETROSINELLI:** No, Your Honor, we -- because of
21 the way the CMO was written, as you pointed out, the County of
22 Suffolk called us and asked us what we thought, and to be quite
23 candid with the Court, the leadership advised them that we
24 didn't think a Rule 12 motion was appropriate at this point,
25 because we don't want to be litigating individual motions. And

9 : 2 6 A M 1 so --

9 : 2 6 A M 2 **THE COURT:** It's just going to be chaos. We've got
9 : 2 6 A M 3 some really important issues to do that may well -- I mean, I
9 : 2 6 A M 4 think they're more summary judgment motions than they are
9 : 2 6 A M 5 really motions to dismiss, and we need to do them in a sort of
9 : 2 6 A M 6 thoughtful way. I mean, there are even some jurisdictional
9 : 2 6 A M 7 issues that are going to require discovery.

9 : 2 6 A M 8 And what is your -- what is the Defense
9 : 2 6 A M 9 Coordinating Committee's view of the fact that I'm thinking
9 : 2 6 A M 10 about just establishing -- changing the rule to say that if you
9 : 2 6 A M 11 don't sign it, if your committee doesn't sign it, that they
9 : 2 6 A M 12 have to come to me to get permission to file it?

9 : 2 6 A M 13 **MR. PETROSINELLI:** That would be most welcome to us,
9 : 2 6 A M 14 Your Honor.

9 : 2 6 A M 15 **THE COURT:** Same thing for the plaintiffs. What do
9 : 2 6 A M 16 y'all think about that?

9 : 2 7 A M 17 **MR. THOMPSON:** Your Honor, we believe this motion is
9 : 2 7 A M 18 premature. It was improvidently filed, and frankly I thought
9 : 2 7 A M 19 the CMO required a -- some sort of pre-approval to file, and
9 : 2 7 A M 20 so --

9 : 2 7 A M 21 **THE COURT:** I thought so too frankly. Ms. Niosi and
9 : 2 7 A M 22 I were looking this morning, because we thought that was a
9 : 2 7 A M 23 requirement as well.

9 : 2 7 A M 24 **MR. THOMPSON:** We don't oppose that.

9 : 2 7 A M 25 **THE COURT:** I kind of like support the committees.

9 : 2 7 A M 1 There are times where the leadership committee may have it
9 : 2 7 A M 2 wrong. I mean, they just are keeping something out that needs
9 : 2 7 A M 3 to be raised and addressed, and that's why I have them come to
9 : 2 7 A M 4 me, because if they present it, and they say, "No, no, it's too
9 : 2 7 A M 5 early," or whatever and it's like really distinct and it's
9 : 2 7 A M 6 important to the party, I want to hear about it. I may well
9 : 2 7 A M 7 say, "You got to go back to your committee. We'll do it at a
9 : 2 7 A M 8 later point," but -- but what I want to do is support the
9 : 2 7 A M 9 leadership, because it's just too many cases, too many issues
9 : 2 7 A M 10 to have 106 different individual actors. I mean, that's not
9 : 2 8 A M 11 what doing an MDL is all about, that you're trying to have
9 : 2 8 A M 12 these issues.

9 : 2 8 A M 13 So I'm not -- so here's what I'm going to do.
9 : 2 8 A M 14 I'm going to enter -- I'm going to enter a CMO that amends
9 : 2 8 A M 15 paragraph 42 that requires endorsement by the -- A, it will
9 : 2 8 A M 16 require endorsement by the committee, the defense coordinating
9 : 2 8 A M 17 committee, and to the extent the substance of the motion
9 : 2 8 A M 18 applies to other cases, it needs to all be filed at one time.
9 : 2 8 A M 19 I mean, those are just sort of I think generally what we would
9 : 2 8 A M 20 do anyway, but I want to impose that.

9 : 2 8 A M 21 I'm going to deny the motion without prejudice,
9 : 2 8 A M 22 have them go back to you. If you don't sign it, they can file
9 : 2 8 A M 23 a motion with me. I think it's early. I think it's way too
9 : 2 8 A M 24 early for this, and -- yes? I see someone standing.

9 : 2 8 A M 25 **MS. KNAUER:** Yes, Elizabeth Knauer, attorney for the

9 : 2 8 A M 1 Port Authority --

9 : 2 8 A M 2 THE COURT REPORTER: I'm sorry. Could you come to
9 : 2 8 A M 3 the microphone?

9 : 2 8 A M 4 THE COURT: Come to the microphone if you could,
9 : 2 8 A M 5 please. It's like trying to hide in the back row of law school
9 : 2 9 A M 6 class, you know. We're not going to let you do that. Yes,
9 : 2 9 A M 7 ma'am.

9 : 2 9 A M 8 MS. KNAUER: I'm Elizabeth Knauer representing the
9 : 2 9 A M 9 Port Authority of New York and New Jersey, and we're also
9 : 2 9 A M 10 liaison counsel for the nonmanufacturing defendants.

9 : 2 9 A M 11 I just wanted to -- I understand the Court's
9 : 2 9 A M 12 concern about multiple motions to dismiss being filed. In our
9 : 2 9 A M 13 case, we do think that we may have some sort of unique defenses
9 : 2 9 A M 14 that we may want to present to the motion to dismiss. So I
9 : 2 9 A M 15 would just request that the Court have -- within the modified
9 : 2 9 A M 16 order include some means of requesting permission from the
9 : 2 9 A M 17 Court --

9 : 2 9 A M 18 THE COURT: Oh, we will definitely do that, but --

9 : 2 9 A M 19 MS. KNAUER: -- if the DCC doesn't agree.

9 : 2 9 A M 20 THE COURT: Let me say something about it. MDL is
9 : 2 9 A M 21 different from litigation where people will come in, and
9 : 2 9 A M 22 they'll trim down the complaint a little bit here and there.
9 : 2 9 A M 23 The case never goes away. It's just like these sort of random,
9 : 2 9 A M 24 unimportant claims that are not really central to the -- to the
9 : 2 9 A M 25 lawsuit are -- are -- you know, people try to get rid of them.

9 : 3 0 A M 1 In an MDL if everybody was doing that, it would be like chaos.
9 : 3 0 A M 2 I mean, you'd have -- it would just be -- and it's not
9 : 3 0 A M 3 important. It's not important to the result here, because the
9 : 3 0 A M 4 case is not going to go away on a motion to dismiss. So I'm
9 : 3 0 A M 5 trying to not only maximize the time all counsel have to
9 : 3 0 A M 6 spend -- because let me say, you come in, and you do a motion
9 : 3 0 A M 7 to dismiss on some of these core issues, the whole defense
9 : 3 0 A M 8 committee has got to get involved, because if they lose that,
9 : 3 0 A M 9 you know, those -- some of their -- it may be one of their core
9 : 3 0 A M 10 issues, and the plaintiffs say, "Oh, no. We can't let the case
9 : 3 0 A M 11 go." You've now redirected the entire litigation where I'm
9 : 3 0 A M 12 trying to get them going on discovery and trying to deal with
9 : 3 0 A M 13 some of these threshold issues about immunity and so forth, and
9 : 3 0 A M 14 you got us off doing an issue that we don't want to do yet. I
9 : 3 0 A M 15 know that's not the intent, but this is really different.

9 : 3 1 A M 16 So the way we do this is you go to leadership
9 : 3 1 A M 17 team. You talk to them. If you feel strongly, then you can
9 : 3 1 A M 18 make a motion to me. I'm going to tell you that my bias is in
9 : 3 1 A M 19 favor of supporting committee decisions, because without
9 : 3 1 A M 20 coordination, it's very hard to run an MDL, okay? So it's got
9 : 3 1 A M 21 to be a really compelling reason to do it.

9 : 3 1 A M 22 Now, I'll eventually get to it. We'll get to
9 : 3 1 A M 23 it, but it just is a question of when we get to it, and so --
9 : 3 1 A M 24 and I will tell you this is very different from your normal
9 : 3 1 A M 25 litigation. There's a certain culture to this, and I don't

1 know how much personal experience you have with that, but I
2 wasn't surprised what the defense lawyers were saying, you
3 know, that, "We were surprised. We tried to urge them not to
4 do it."

5 **MS. KNAUER:** Well, and I will say that the County of
6 Suffolk did not -- although we are liaison counsel for the
7 nonmanufacturing defendants, which includes them, they did not
8 actually come to me first.

9 **THE COURT:** So who -- is someone here representing
10 the County of Suffolk?

11 **MS. KNAUER:** No, they are not present.

12 **THE COURT:** They just filed it and ran?

13 **MR. OLSEN:** Your Honor, we did hear from them in
14 advance.

15 **THE COURT:** I saw that. They consulted, and, you
16 know, y'all urged them not to do it. It's not bad. I mean,
17 I'm going to get to these issues. It's just how are we going
18 to run this thing? And I think kind of making a little bit of
19 a big deal about it right now just kind of highlights that we
20 need to support our leadership committees on both the plaintiff
21 and defense side.

22 **MS. KNAUER:** And that's all understood. I just
23 wanted to ensure that there would be some procedure --

24 **THE COURT:** There is definitely going to be a
25 procedure. I will always hear you, and at the end of every --

9 : 3 2 A M 1 not only can you file it, my CMO will say you -- any party that
9 : 3 2 A M 2 does not get permission may file a motion with the Court. That
9 : 3 2 A M 3 will always be available. We meet here every month. My last
9 : 3 3 A M 4 statement to you each month, "Is there any other issue anyone
9 : 3 3 A M 5 wishes to raise?" So you'll always have the opportunity to
9 : 3 3 A M 6 have access to me.

9 : 3 3 A M 7 MS. KNAUER: And so there would be a motion to --

9 : 3 3 A M 8 THE COURT: Permission to file.

9 : 3 3 A M 9 MS. KNAUER: For permission to file the motion.

9 : 3 3 A M 10 THE COURT: Yes.

9 : 3 3 A M 11 MS. KNAUER: Thank you, Your Honor.

9 : 3 3 A M 12 THE COURT: Thank you. Okay. Folks, you know, we --
9 : 3 3 A M 13 of course, my view of the world is 30 days ago I lifted the
9 : 3 3 A M 14 stay on discovery, so I want to know when y'all are going to
9 : 3 3 A M 15 finish, right?

9 : 3 3 A M 16 MR. PETROSINELLI: Mr. Dukes said you might ask that
9 : 3 3 A M 17 today.

9 : 3 3 A M 18 THE COURT: Y'all were like 2000 never, you know. So
9 : 3 3 A M 19 let me just -- again, you know, I am not willing to bifurcate
9 : 3 3 A M 20 discovery, because every time I do that, the lawyers are
9 : 3 3 A M 21 calling me from depositions saying someone asked a question
9 : 3 3 A M 22 outside, and it drives me crazy, so I don't do that.

9 : 3 3 A M 23 But I do think we need to be focused on some
9 : 3 3 A M 24 really important issues. I talked about this a little bit last
9 : 3 4 A M 25 month. Let me say again. I think among the issues that I just

1 think prudently in trying to organize the MDL in a meaningful
2 way, we've got to address -- we got to do the discovery on
3 governmental contractor immunity. And let me say, it's lot of
4 issues and a lot of facts, and it goes into history going back
5 to the origin of the -- of the creation of the AFFF, and, you
6 know, y'all got some work to do, and there are issues about
7 disclosure of risk. There are kinds of issues in government
8 contractor immunity, and it's going to take some work, and
9 y'all need to get on this. You know, y'all need to be getting
10 whatever documents might be available, and then you got to
11 get -- you got to take depositions. You're going to run into
12 situations where people involved are no longer alive. You're
13 going to have all kind of issues. This is like really hard
14 work, and I want y'all to get on it, and I don't want someone
15 filing a motion to dismiss on that basis right this moment,
16 because we got too much work to do on that.

17 The -- another issue which -- and I said this
18 before. And I know y'all are already working on the fact
19 sheets on the water districts, because I know the defense wants
20 to know what's the score there, how much critical information.
21 I think that is a really important threshold kind of set of
22 issues to deal with. You know, the -- I think the hardest
23 issue for plaintiffs is, you know, individual causation.
24 General causation is sort of -- is not as arduous an issue.
25 But there appears to be a significant scientific dispute about

9 : 3 5 A M 1 what threshold of PFOA and PFOS in the water poses a health
9 : 3 5 A M 2 risk, and from the materials both sides provided me, I'm aware
9 : 3 5 A M 3 of one time the EPA said it was 400 parts per trillion. Then
9 : 3 6 A M 4 they said it was 70 parts per trillion. A committee of the CDC
9 : 3 6 A M 5 says it's 10 or 11 parts per trillion. New Jersey says
9 : 3 6 A M 6 something in that same range. It's a very dynamic moment right
9 : 3 6 A M 7 now, and we need to be doing work about what is the underlying
9 : 3 6 A M 8 scientific bases for -- for -- for those numbers? That is
9 : 3 6 A M 9 really important.

9 : 3 6 A M 10 And I said before, you know, the one drop, you
9 : 3 6 A M 11 know, one part per trillion is -- is a single -- one part per
9 : 3 6 A M 12 trillion is one single drop in a swimming pool the size of a
9 : 3 6 A M 13 football field 43 feet deep, okay? So 10 parts per trillion is
9 : 3 6 A M 14 literally 10 drops in that. Now, if there's a sound scientific
9 : 3 6 A M 15 basis for that, we need to know about that. If there's an
9 : 3 7 A M 16 argument about it, we need to be developing that. That's like
9 : 3 7 A M 17 -- when we get to science day, I'm going to talk to you about
9 : 3 7 A M 18 that. I think this is like really an important threshold
9 : 3 7 A M 19 issue.

9 : 3 7 A M 20 The C8 scientific panels have very interesting
9 : 3 7 A M 21 information, but the level of exposure there was much more
9 : 3 7 A M 22 intense than we're talking about here in the water supply, and
9 : 3 7 A M 23 we need to know -- you know, I'm just very curious about what
9 : 3 7 A M 24 was that Center for Disease Control panel, what were they
9 : 3 7 A M 25 relying on when they talked about 10 parts per trillion? what

1 was that information? And is it reliable? Are there -- if
2 it's disputed, how important is -- is duration? I mean, there
3 are all these issues, and we'll also -- I'm going to mention
4 that on science day. Y'all got to get to work on all of that,
5 and those issues will, of course, go into every other part of
6 this case. And so I think we need to get on with the discovery
7 on all of that that really go to the water districts.

8 I know -- I'm not trying to stop other things,
9 but I just think that is a good focus and, you know, to the
10 extent that plaintiffs can't sustain their proof on that issue,
11 then you got real problems on the other issues. If they can,
12 that may be a building block to other claims.

13 So I'm just saying I would -- I think in a
14 potential litigation raising as vast a number of issues as
15 here, if you try to swallow it whole, you just choke. You try
16 to narrow it down to something. And if y'all disagree with
17 that, I don't want to run your litigation, but it just strikes
18 me looking at that, that's an issue as the presiding judge it
19 looks like really interesting to me and really will answer a
20 lot of questions down the road that if we get answers to those
21 issues, we'll come to understand.

22 So I would like y'all to be conferring about how
23 we're going to get there. You know, what is our discovery plan
24 here? I didn't issue a scheduling order or anything. I don't
25 want to do that right now. But what I do want is to sort of

9 : 3 9 A M 1 hear y'all's plans how are we going to get to this? And it may
9 : 3 9 A M 2 well be that, you know, the plaintiffs will have their own
9 : 3 9 A M 3 plan, and the defendants will have their plan. I don't expect
9 : 3 9 A M 4 them to have the same plans, but they have different -- but,
9 : 3 9 A M 5 you know, to get on with -- and to share with each other so
9 : 3 9 A M 6 that we can -- so that I know that documents are being
9 : 3 9 A M 7 exchanged, depositions are being taken. We're moving on this,
9 : 3 9 A M 8 okay?

9 : 3 9 A M 9 Now let me talk to you about science day for a
9 : 3 9 A M 10 second. This is -- apparently has been the notion that you --
9 : 3 9 A M 11 that the attorneys are going to litigate over what I'm going to
9 : 3 9 A M 12 ask for for science day. That is a mistake, okay? This is for
9 : 3 9 A M 13 me, not for y'all. And I -- I'm considering everything y'all
9 : 3 9 A M 14 wrote. Thank you very much for that. Some of them were good
9 : 3 9 A M 15 ideas. But let me mention to you some things, and I'm going to
9 : 4 0 A M 16 issue an order about what -- the scope of science day, because
9 : 4 0 A M 17 it's still a work in progress in my own head, and I'm going to
9 : 4 0 A M 18 go over with some care the recent responses of counsel which
9 : 4 0 A M 19 laid out different ideas they thought that I might want to
9 : 4 0 A M 20 consider.

9 : 4 0 A M 21 One of them is the issue I just raised about the
9 : 4 0 A M 22 scientific bases of these varying numbers, and I think that's a
9 : 4 0 A M 23 really important issue. It goes to the issue is at what level
9 : 4 0 A M 24 of this exposure poses human health risks? That's really the
9 : 4 0 A M 25 question. And I will tell you that all those articles both of

9 : 4 0 A M 1 you gave me, none of them really addressed that question about
9 : 4 0 A M 2 in the water supply, you know, the levels -- at what levels,
9 : 4 0 A M 3 and it may well be that we're literally at the cutting edge of
9 : 4 0 A M 4 science on this. I don't know, but I want to -- I mean, we're
9 : 4 1 A M 5 not completely beyond the frontier, because you got groups
9 : 4 1 A M 6 talking about levels that are very low. I mean, I don't think
9 : 4 1 A M 7 they're taking a dartboard out and throwing the dart at a wall
9 : 4 1 A M 8 and hitting a number. They got a reason for it. I want to
9 : 4 1 A M 9 know about that. And if plaintiffs love that number and the
9 : 4 1 A M 10 defendants think it's not sound science, I want to hear about
9 : 4 1 A M 11 that too.

9 : 4 1 A M 12 I want to know about -- I've read different --
9 : 4 1 A M 13 in the materials I've reviewed, I am aware that there has been
9 : 4 1 A M 14 some documentation about levels of exposure in the water
9 : 4 1 A M 15 supply, contamination in the water supply. I think I read
9 : 4 1 A M 16 somewhere there were like 70 sites and 19 of them were over the
9 : 4 1 A M 17 EPA number of 70 parts per trillion. I'd like to know what
9 : 4 2 A M 18 those specific numbers are at those sites, because, you know,
9 : 4 2 A M 19 are they over 10 parts per trillion? Are they under 10 parts
9 : 4 2 A M 20 per trillion? I'm not saying I love that number. I'm just
9 : 4 2 A M 21 saying, you know, the different standards, what actually is the
9 : 4 2 A M 22 level there? And do we have any idea about duration of that,
9 : 4 2 A M 23 how long it's been there? And has it gone up or down, or has
9 : 4 2 A M 24 it been unchanged?

9 : 4 2 A M 25 So that whole issue about what is our knowledge

9 : 4 2 A M 1 about actual, you know, contamination of the water supply in
9 : 4 2 A M 2 those various sites.

9 : 4 2 A M 3 Another area of interest to me is if we were to
9 : 4 2 A M 4 do medical monitoring, are there tests available to efficiently
9 : 4 2 A M 5 and economically evaluate the levels of PFOS or PFOA in the
9 : 4 2 A M 6 blood serum? Are there tests to suggest that there are
9 : 4 2 A M 7 complications from that exposure? I was told last month about
9 : 4 3 A M 8 there was a physician in New Jersey with a screening protocol.
9 : 4 3 A M 9 I mean, I would imagine you might have something where you
9 : 4 3 A M 10 would have an initial screening protocol, and then if certain
9 : 4 3 A M 11 things came out indicating an issue, there would be some
9 : 4 3 A M 12 further follow-up. I mean, I don't want to reinvent the wheel
9 : 4 3 A M 13 on this if we're going to do it. Are there people out there
9 : 4 3 A M 14 thinking about this, talking about this? Is that a -- is there
9 : 4 3 A M 15 a way to do it?

9 : 4 3 A M 16 I've told you before that if we explore this --
9 : 4 3 A M 17 and I'm not completely committed to doing it -- we might pick
9 : 4 3 A M 18 one or two sites and see if it tells us anything worth having.
9 : 4 3 A M 19 You know, is this information worth having?

9 : 4 3 A M 20 I will tell you that one of the challenges of
9 : 4 3 A M 21 ever proving individual causation is where a health
9 : 4 3 A M 22 complication arises and may be related to a toxic exposure or
9 : 4 3 A M 23 to a thousand other reasons, and how one gets to saying most
9 : 4 4 A M 24 probably is caused by the exposure is always one of those
9 : 4 4 A M 25 challenges. And so I'm kind of interested are there tests out

9 : 4 4 A M 1 there that might assist us in that, or are we going to be
9 : 4 4 A M 2 looking at other, you know, less direct evidence?

9 : 4 4 A M 3 And related to that, are there diseases or
9 : 4 4 A M 4 conditions uniquely caused by PFOA or PFOS contamination or
9 : 4 4 A M 5 ones which arise rarely in the absence of exposure among that
9 : 4 4 A M 6 sort of age group affected? I remember in Fen-Phen litigation,
9 : 4 4 A M 7 primary pulmonary hypertension was very rare for young people,
9 : 4 4 A M 8 and suddenly they had all of these cases, and all of them were
9 : 4 4 A M 9 on Fen-Phen. Is there something like that here?

9 : 4 4 A M 10 If they're -- if there are common health
9 : 4 4 A M 11 conditions caused or exacerbated by PFOA or PFOS exposure, are
9 : 4 5 A M 12 there methods to demonstrate that it's likely related to that
9 : 4 5 A M 13 exposure?

9 : 4 5 A M 14 Another area is -- for me for science day, I'm
9 : 4 5 A M 15 interested in it, is remediation methods, costs and
9 : 4 5 A M 16 effectiveness. What's it involve? What are the methods?

9 : 4 5 A M 17 And another issue which seems to be disputed
9 : 4 5 A M 18 here, are there alternatives to PFOA and PFOS that were
9 : 4 5 A M 19 available -- are available in this product, and were they
9 : 4 5 A M 20 previously available? You know, that could relate to a lot of
9 : 4 5 A M 21 issues, including governmental contractor immunity.

9 : 4 5 A M 22 So those are issues -- those are six issues that
9 : 4 5 A M 23 just to me are things -- and I will issue an order that sets
9 : 4 5 A M 24 forth these things that I'm interested in science day, and I
9 : 4 6 A M 25 will selfishly say it, the science day is for me, not for y'all

9 : 4 6 A M 1 to spoon feed me. Y'all already have given me the spoon
9 : 4 6 A M 2 feeding. I loved that there were ten articles each side, and
9 : 4 6 A M 3 none of them overlapped each other. They're like two different
9 : 4 6 A M 4 parallel universes there. And what I'm going to try to do is
9 : 4 6 A M 5 have a third line which is going to be stuff we all sort of
9 : 4 6 A M 6 recognize, may get us closer to answering those questions.

9 : 4 6 A M 7 I will also say something that I doubt I need
9 : 4 6 A M 8 to: That I won't be surprised in the course of this litigation
9 : 4 6 A M 9 that there will be new studies and new articles and new
9 : 4 6 A M 10 information that comes forward that will enhance our
9 : 4 6 A M 11 understanding, because I think we are in many ways at the
9 : 4 6 A M 12 frontier here on some of these medical and scientific issues.
9 : 4 6 A M 13 Please provide them to me promptly. I'm interested. You know,
9 : 4 6 A M 14 I'm trying to keep up with the literature, and we'll read them.
9 : 4 6 A M 15 Don't flood me with every time there's something that's a
9 : 4 6 A M 16 random footnote or something, but if there's something that
9 : 4 7 A M 17 seems to be significant and -- you know, I've been in a lot of
9 : 4 7 A M 18 litigation like this where material studies come in that are
9 : 4 7 A M 19 really pretty important, important for the experts and so
9 : 4 7 A M 20 forth.

9 : 4 7 A M 21 Okay. Let me talk about the -- I saw somewhere
9 : 4 7 A M 22 y'all were debating over the limit of 25 interrogatories and
9 : 4 7 A M 23 Rule 33(a). The limit of 25 interrogatories will not apply to
9 : 4 7 A M 24 this litigation, does not apply. You know, we got 106 cases
9 : 4 7 A M 25 right now. We have thousands of plaintiffs. It doesn't apply.

9 : 4 7 A M 1 Now, here's the -- what I'm going to ask y'all
9 : 4 7 A M 2 to think about. Should there be a limit? I don't want abuse.
9 : 4 7 A M 3 I don't want trying to bury the other side in interrogatories.
9 : 4 7 A M 4 The 25 interrogatory rule is there for a reason. I've lifted
9 : 4 8 A M 5 it in many complex cases, because it doesn't make sense. You
9 : 4 8 A M 6 need more than that, but I want the parties to consult should
9 : 4 8 A M 7 we have a limit, and all the limit is is you come to me if you
9 : 4 8 A M 8 have more. And it may be useful to do that, but I will -- at
9 : 4 8 A M 9 the next status conference, I want y'all to come to me with a
9 : 4 8 A M 10 joint proposal, or if not, your separate thoughts about that,
9 : 4 8 A M 11 but the 25 interrogatory limit will not apply, and the next CMO
9 : 4 8 A M 12 will say that.

9 : 4 8 A M 13 Okay. That's my list. From the plaintiff, any
9 : 4 8 A M 14 thoughts, ideas, concerns?

9 : 4 8 A M 15 **MR. LONDON:** One second, Your Honor. I'm just
9 : 4 8 A M 16 looking at our joint report to make sure we did cover
9 : 4 8 A M 17 everything.

9 : 4 9 A M 18 **THE COURT:** I used your report to prepare my notes.

9 : 4 9 A M 19 **MR. LONDON:** well, you did an excellent job, Your
9 : 4 9 A M 20 Honor.

9 : 4 9 A M 21 **THE COURT:** I didn't do it -- I'm not kind of like
9 : 4 9 A M 22 random abstract artist or something.

9 : 4 9 A M 23 **MR. LONDON:** It was a good job then, Your Honor. I
9 : 4 9 A M 24 think you covered it all.

9 : 4 9 A M 25 **MR. THOMPSON:** The -- I think the United States, that

9 : 4 9 A M 1 issue is -- well, it's for them to say, but that's still in the
9 : 4 9 A M 2 report.

9 : 4 9 A M 3 **THE COURT:** Okay. Mr. Petrosinelli?

9 : 4 9 A M 4 **MR. PETROSINELLI:** Nothing from the defense, Your
9 : 4 9 A M 5 Honor.

9 : 4 9 A M 6 **THE COURT:** Ms. Williams, give me a little status
9 : 4 9 A M 7 report on production of documents and where all that is with
9 : 4 9 A M 8 the government.

9 : 4 9 A M 9 **THE WITNESS:** well, we had been looking into Air
9 : 4 9 A M 10 Force and Defense Logistic Agency's supply records. We found a
9 : 4 9 A M 11 private database which has been collecting documents that would
9 : 4 9 A M 12 normally be destroyed in the government process, and so we're
9 : 4 9 A M 13 getting that information and how to search it for the parties.

9 : 4 9 A M 14 **THE COURT:** That will -- that would be of great
9 : 4 9 A M 15 benefit to everybody. And how -- how did there happen to be a
9 : 4 9 A M 16 private database for that?

9 : 5 0 A M 17 **MS. WILLIAMS:** I'm guessing, Your Honor, but I think
9 : 5 0 A M 18 it's because for the Defense Logistics Agency's documents,
9 : 5 0 A M 19 there's a market. There are people who are interested who want
9 : 5 0 A M 20 to know like how much does this document sell for? So they're
9 : 5 0 A M 21 able to collect all of those documents and then sell them back
9 : 5 0 A M 22 to the defense supplier at a profit, because they have
9 : 5 0 A M 23 information.

9 : 5 0 A M 24 **THE COURT:** Yes. I get that. That makes plenty of
9 : 5 0 A M 25 sense. I know at some point the government is going to want me

9 : 5 0 A M 1 to address governmental immunity; is that a good guess?

9 : 5 0 A M 2 MS. WILLIAMS: That is an excellent guess, Your
9 : 5 0 A M 3 Honor.

9 : 5 0 A M 4 THE COURT: Yes, thank you. And we will. I'm not
9 : 5 0 A M 5 neglecting the issue, but let's -- are there factual issues
9 : 5 0 A M 6 relevant to that -- to such a motion?

9 : 5 0 A M 7 MS. WILLIAMS: Yes, Your Honor.

9 : 5 0 A M 8 THE COURT: well, I think you may want to alert the
9 : 5 0 A M 9 parties that at some point you may be making motions, and that
9 : 5 0 A M 10 they need to get on with discovery.

9 : 5 0 A M 11 MS. WILLIAMS: Yes, Your Honor.

9 : 5 0 A M 12 THE COURT: Because what I -- you know, I've talked
9 : 5 1 A M 13 about governmental contractor immunity, but to the extent there
9 : 5 1 A M 14 are issues, y'all ought to be consulting with the government.
9 : 5 1 A M 15 Now, I'm wondering. I know the parties got the *Be77* discovery
9 : 5 1 A M 16 and other things. Are there things from the government that
9 : 5 1 A M 17 you are pursuing now that you have not received?

9 : 5 1 A M 18 MR. THOMPSON: Judge, we've actually had an
9 : 5 1 A M 19 opportunity to confer with the government and with regard to
9 : 5 1 A M 20 various databases, and the voluntary cooperation has been very
9 : 5 1 A M 21 gratifying to date. So we don't have any complaints. As we go
9 : 5 1 A M 22 forward, some of that patina may wear off, but we may --

9 : 5 1 A M 23 THE COURT: Right. We may have our disagreements,
9 : 5 1 A M 24 but I think everybody is very impressed with Ms. Williams'
9 : 5 1 A M 25 diligence here. So --

9 : 5 1 A M 1 **MR. THOMPSON:** Yes, sir.

9 : 5 1 A M 2 **MR. OLSEN:** Your Honor, we too appreciate -- we've
9 : 5 1 A M 3 been perfectly cooperative with Ms. Williams. The plaintiffs
9 : 5 1 A M 4 have issued master discovery that will apply to everyone,
9 : 5 1 A M 5 including the government. We are looking at that discovery to
9 : 5 2 A M 6 see if there's anything additional that the defendants need
9 : 5 2 A M 7 from the government, and we will work with them as we evaluate
9 : 5 2 A M 8 that.

9 : 5 2 A M 9 **MS. WILLIAMS:** And unfortunately, Your Honor, the
9 : 5 2 A M 10 cooperation may be coming to an end, because the government
9 : 5 2 A M 11 does have immunity defenses to discovery. So while I have to
9 : 5 2 A M 12 help people direct to third-party discovery, there are
9 : 5 2 A M 13 thousands of claims which are not against the United States in
9 : 5 2 A M 14 this lawsuit. As a party, we have an immunity to suit, which
9 : 5 2 A M 15 is different than the immunity that defendants are pursuing.
9 : 5 2 A M 16 That's in the law of the Fourth Circuit a preemption defense,
9 : 5 2 A M 17 so we're differently situated that way.

9 : 5 2 A M 18 **THE COURT:** Are you suggesting that Rule 45 does not
9 : 5 2 A M 19 apply to the government even if it wasn't a party?

9 : 5 2 A M 20 **MS. WILLIAMS:** No, Rule 45 is the rule that should be
9 : 5 2 A M 21 used, Your Honor, because the --

9 : 5 2 A M 22 **THE COURT:** But only if you're not a party. As long
9 : 5 2 A M 23 as you're a party, you're subject to discovery.

9 : 5 2 A M 24 **MS. WILLIAMS:** Not -- the United States is only
9 : 5 2 A M 25 subject to jurisdictional threshold issues. When we have a

jurisdictional defense, it's a threshold issue, and that immunity has to be resolved before any merits-based discovery on us.

THE COURT: But even if you were to get -- have immunity, you would still be subject to Rule 45.

MS. WILLIAMS: Yes, Your Honor. And in those cases where we're not a party, non-party discovery is not affected and not limited.

THE COURT: I'm sorry?

MS. WILLIAMS: Non-party discovery is not affected and limited in the same way that party discovery is.

THE COURT: I recognize that. I was aware of that, but it doesn't -- it's not absent either, and to the extent there are relevant document -- relevant -- documents relevant to a case, even if the government is not a party, as a -- it has certain duties under -- I know there are issues here about how we get to them and what standards we use and all of that, but they're not immune. They're not off limits. That's for the Court to determine whether they fall within Rule 45 and applicable standards in my circuit, right? I mean --

MS. WILLIAMS: Yes, Your Honor.

THE COURT: So -- but I think to the extent that the government doesn't have any heartburn about something that's highly probative to this case and to the public health, it should not be holding them back on some principle that -- that,

9 : 5 4 A M 1 you know, somehow we have -- you know, we have immunity.

9 : 5 4 A M 2 You're a party right now. Some of these jurisdictional issues,
9 : 5 4 A M 3 I would read them pretty broadly as to the applicability here.

9 : 5 4 A M 4 So, you know, I would -- and to the extent we
9 : 5 4 A M 5 encounter a situation where you're refusing, I want that to be
9 : 5 4 A M 6 promptly brought to my attention, because I will immediately
9 : 5 4 A M 7 address it.

9 : 5 4 A M 8 But, you know, we're in the search for the truth
9 : 5 4 A M 9 here, and frankly, Ms. Williams, the government's been way
9 : 5 4 A M 10 ahead on some of these issues, and I have not seen the
9 : 5 4 A M 11 government's view as in any way obstructionist, but just to the
9 : 5 4 A M 12 contrary, very open. But when you have critical information
9 : 5 5 A M 13 that's essential to the public health, the government is going
9 : 5 5 A M 14 to have a pretty tough time trying to keep that information out
9 : 5 5 A M 15 of the -- beyond the reach of Rule 45. I mean, whatever the
9 : 5 5 A M 16 standard, it's going to be pretty tough.

9 : 5 5 A M 17 So I urge y'all to continue to voluntarily
9 : 5 5 A M 18 cooperate, and to the extent where you reach a point where you
9 : 5 5 A M 19 can't go any further than that, I'll address those issues,
9 : 5 5 A M 20 okay?

9 : 5 5 A M 21 **MS. WILLIAMS:** Yes, Your Honor. And we're not at
9 : 5 5 A M 22 that point now. It's just important to lay out the --

9 : 5 5 A M 23 **THE COURT:** Listen, I know the Department of
9 : 5 5 A M 24 Justice's view, you know. I don't have a dog in that fight.
9 : 5 5 A M 25 I'm just -- but I am -- as the presiding judge over this, I

1 want the parties to have the relevant information. To the
2 extent the claims of the plaintiffs have merit, there is a huge
3 public health issue here, and, you know -- and I'm not going to
4 be the guy that suppresses the relevant evidence and that
5 doesn't allow this information to come forward. There are a
6 lot of interests here having this information fully addressed.
7 If there's no merit to it, that's fine. If there is merit to
8 it, this is the vehicle we have to discover that information.
9 That's what discovery is, right? It's just to discover that
10 information.

11 So I have nothing but praise, Ms. Williams, for
12 you up to this point, and if we reach a point where we're
13 hitting a wall, let's all talk about it. Okay?

14 **MS. WILLIAMS:** Yes, Your Honor.

15 **THE COURT:** Okay. From the defense, any additional
16 matters?

17 **MR. PETROSINELLI:** No, Your Honor.

18 **THE COURT:** Very good. Well, I noticed everyone
19 seemed fascinated last night with the fact that there was a
20 dungeon in the -- in the venue for the -- of the cocktail
21 party. I didn't notice anyone wandering down there in the fear
22 they might not return, but I doubt they called it a dungeon in
23 1780, you know? Though I'm sure it was like, you know -- it
24 wasn't like staying at the Ritz-Carlton.

25 But, you know, we have -- for those of you who

9 : 5 7 A M 1 have done one of these carriage tours, there's also a City Jail
9 : 5 7 A M 2 that is -- that I think was constructed in the early 19th
9 : 5 7 A M 3 Century and existed -- I think it was used I think sometime
9 : 5 7 A M 4 into the 20th century, and it is -- if it's not a dungeon, I
9 : 5 7 A M 5 don't know what it is. For those of you who have a moment, you
9 : 5 7 A M 6 might want to go on the Ghost Tour of the City Jail. I hear
9 : 5 7 A M 7 many people leave completely frightened by it.

9 : 5 7 A M 8 But -- so, you know, whose turn is it next month
9 : 5 7 A M 9 for the venue of the cocktail party?

9 : 5 7 A M 10 **MR. PETROSINELLI:** Mr. Thompson.

9 : 5 7 A M 11 **THE COURT:** Oh, my goodness. Mr. Thompson, you're
9 : 5 7 A M 12 getting a tall order here after you -- are you going to have a
9 : 5 7 A M 13 dungeon at yours, you know?

9 : 5 7 A M 14 **MR. THOMPSON:** well, Judge, I would take them to
9 : 5 7 A M 15 Bowens Island except I'm not sure how we would all get back.

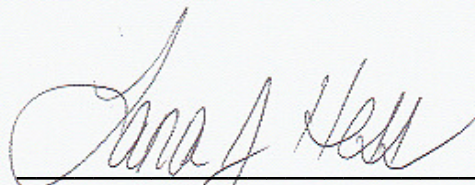
9 : 5 8 A M 16 **THE COURT:** well, you might rent a bus. That's the
9 : 5 8 A M 17 way -- okay. I look forward to seeing y'all next month.

9 : 5 8 A M 18 This hearing is adjourned.
9 : 5 8 A M 19
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* * * * *

CERTIFICATE

I, Tana J. Hess, CCR, FCRR, Official Court Reporter
for the United States District Court, District of South
Carolina, certify that the foregoing is a true and correct
transcript, to the best of my ability and understanding, from
the record of proceedings in the above-entitled matter.

A handwritten signature in cursive script, reading "Tana J. Hess", is written over a light blue rectangular background.

Tana J. Hess, CRR, FCRR, RMR
Official Court Reporter